

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

RICHARD L. GRUBER,

Plaintiff,

Case No. 3:15-cv-00543-RCJ-CBC

VS.

KAREN GEDNEY, et al..

Defendant.

ORDER

Plaintiff, an inmate in custody of Nevada Department of Corrections, moves this Court to allow him to file an untimely notice of appeal in this case. He seeks to appeal a judgment that this Court entered on September 12, 2019. His motion is dated February 24, 2020—167 days later. The Court therefore denies Plaintiff’s motion as untimely.¹

Fed. R. App. P. 4 governs when a notice of appeal must be filed to be timely. It states, in relevant part, “In a civil case, except as provided in Rule[] . . . 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment” Fed. R. App. P. 4(a)(1)(A). For inmates, a court should consider a notice timely “if it is deposited in the

¹ Plaintiff also moves this Court to send him a docket sheet and a copy of every document on file to pursue the appeal. As the Court denies his motion for leave to file a notice of appeal, the Court denies this motion as moot.

1 institution's internal mail system on or before the last day for filing" and "it is accompanied by . . .
2 evidence (such as a postmark or date stamp) showing that the notice was so deposited and that
3 postage was prepaid." Fed. R. App. P. 4(c). A district court however may extend the time to file a
4 notice of appeal if a litigant shows "excusable neglect or good cause," but a party must "so move[]
5 no later than 30 days after the time [to file a notice of appeal] prescribed by this Rule 4(a) expires."
6 Fed. R. App. P. 4(a)(5).

7 As the Court entered its judgment on September 12, 2019, the deadline for Plaintiff to mail
8 his notice of appeal was by October 14, 2019. Even assuming that Plaintiff has shown good cause
9 or excusable neglect, his motion needed to be mailed within thirty days of October 14, 2019, which
10 was November 13, 2019. Plaintiff however mailed his motion on February 24, 2020. The Court
11 accordingly denies the motion as untimely.

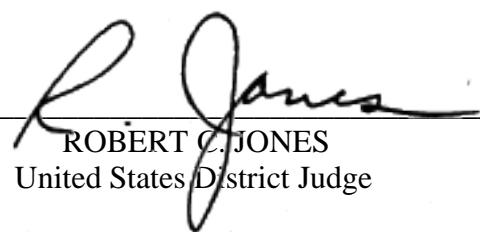
12 **CONCLUSION**

13 IT IS HEREBY ORDERED that the Motion for Leave to File an Untimely Notice of
14 Appeal (ECF No. 160) is DENIED.

15 IT IS FURTHER ORDERED that Motion for Documents (ECF No. 161) is DENIED AS
16 MOOT.

17 IT IS SO ORDERED.

18 Dated July 14, 2020.

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21 ROBERT C. JONES
22 United States District Judge
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